

FILED 08 SEP 18 13:50 USDC-ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

LEONARDO VARGAS-SABALA,)	
)	Civil No. 08-903-PK
Plaintiff,)	
)	
v.)	
)	
J.E. THOMAS, Warden,)	ORDER
)	
Defendant.)	

PAPAK, Magistrate Judge.

Plaintiff moves for reconsideration of the court's prior Order (#4) construing his § 2241 Habeas Petition as a civil rights action brought pursuant to Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). A § 2241 habeas petition challenges the **execution** of a criminal sentence on grounds that a prisoner is in custody in violation of the Constitution or laws or treaties of the United States. Benny v. U.S. Parole Com'n, 295 F.3d 977, 988 (9th Cir. 2002); 28 U.S.C. § 2241(c)(3)). Claims

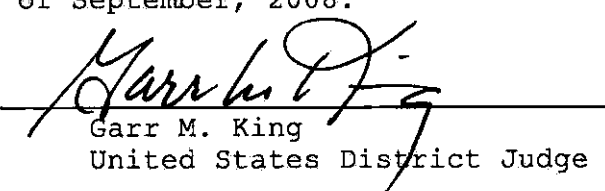
challenging the conditions of a prisoner's confinement are properly brought as a civil rights action, in this case, a Bivens action. See Estelle v. Gamble, 429 U.S. 97, 105 (1976) ("[D]eliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983."); Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991) ("Actions under § 1983 and those under Bivens are identical save for the replacement of a state actor under § 1983 by a federal actor under Bivens."). Accordingly, plaintiff's motion for reconsideration (titled Objections and Response to Order) is denied.

CONCLUSION

Based on the foregoing, plaintiff's Motion for Reconsideration (#5) is DENIED. In accordance with the court's prior Order (#4) plaintiff is directed to submit the filing fee (remaining balance \$345.00) or an application to proceed *in forma pauperis* authorizing the agency having custody of him to collect payments toward the balance of the filing fee of \$345.00 within 30 days of the date of this order. Plaintiff's failure to do so will result in the dismissal of this action.

IT IS SO ORDERED.

DATED this 18th day of September, 2008.



 Garr M. King
 United States District Judge